IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Gopiram Dagla v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.203/1998
under Articles 226 and 227 of the Constitution of India.

Date of Order : 15th September, 2005

P R E S E N T
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. A.K.Rajvanshy, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. Ravi Bhansali, for the respondents No.5 & 6.

BY THE COURT :

The petitioner, a member of Scheduled Caste, was holding the post of Junior Marketing Officer in Agriculture Marketing Department. During pendency of writ petition he has already been retired from service on achieving age of superannuation. The instant petition is filed by him claiming promotion to the post of Marketing Officer under Rajasthan Agriculture Marketing Service Rules, 1986 (hereinafter referred to as “the Rules of 1986”).

The facts in brief leading to present petition are that the petitioner entered in services of Government of Rajasthan being appointed as Grading

Assistant on being selected by Rajasthan Public Service Commission in the year 1971. The petitioner was promoted as District Agriculture Officer (Group "C") under an order dated 30.3.1991 and was posted on an equivalent post i.e. of Secretary, Krishi Upaj Mandi Samiti, Jaitsar. The service of the petitioner was absorbed with Agriculture Marketing Department on 7.7.1992. The Agriculture Marketing Department under an order dated 6.2.1993 declared a seniority list of Junior Marketing Officers and the posts equivalent thereto wherein name of the petitioner was shown at Sr.No.64. An another seniority list was declared on 22.9.1995 wherein the petitioner was placed at Sr.No.47.

Under the Rules of 1986 the Junior Marketing Officers are having an avenue for promotion to the post of Marketing Officer. The promotion to the post referred above is required to be made by considering candidature of substantive Junior Marketing Officers by adopting the criteria of seniority-cum-merit and merit with the ratio of 1:1. Under an order dated 6.3.1996 the Government of Rajasthan promoted Junior Marketing Officers as Marketing Officers against the vacancies pertaining to the years 1990-91, 1991-92, 1992-93, 1993-94, 1994-95 and 1995-96.

The grievance of the petitioner is that the respondents while making promotion to the post of

Marketing Officer against the vacancies of the year 1995-96 have not considered his candidature though he was within the zone of consideration being a member of Scheduled Caste. Hence petitioner preferred the present writ petition.

No reply to the writ petition has been filed on behalf of the respondents.

This Court by order dated 28.7.2005 directed the respondents to produce the entire record of the meeting of Departmental Promotion Committee under the recommendations of which the order dated 6.3.1996 was passed giving promotion to eight persons as Marketing Officers against the vacancies of the year 1995-96. In pursuant thereto the record was produced before the Court on 8.8.1995. From perusal of record it was found that the candidature of the petitioner was considered for the purpose of appointment by way of promotion to the post of Marketing Officer by Departmental Promotion Committee under extended zone of consideration as the petitioner belongs to Scheduled Caste. The candidature of the petitioner was considered against the vacancies for the year 1995-96 and the year 1996-97, however, the petitioner was not found fit to be promoted under the category of seniority-cum-merit as at the relevant time he was facing a minor punishment i.e. of stoppage of annual grade increment without cumulative effect.

It is contended by counsel for the petitioner that the respondents should have considered the candidature of the petitioner by ignoring the punishment imposed upon him in the year 1989. It is also contended by counsel for the petitioner that where the criteria is seniority-cum-merit the promotion could not be denied on the count of imposition of a minor punishment.

Heard counsel for the parties.

The petitioner preferred present writ petition with an assumption that his candidature was not at all considered by the respondents for the purpose of promotion to the post of Marketing Officer. From perusal of original record it revealed that the candidature of the petitioner was considered by the respondents by extending the zone of consideration as the petitioner belongs to Scheduled Caste. It is also a position admitted that no person junior to the petitioner has been promoted under the order dated 4.3.1996. In view of it whatever relief claimed by the petitioner in present writ petition has become infructuous. However, it is contended by counsel for the petitioner that his candidature was not considered by the respondents in accordance with law, therefore, the same shall amount to non-consideration of his candidature for promotion. It is stated by counsel for

the petitioner that the petitioner's candidature was required to be considered under the criteria of seniority-cum-merit and while doing so the minor punishment so imposed could not be taken into consideration.

To substantiate the contention reliance has been placed on a judgment of this Court rendered in the case of Bal Kishan v. District & Sessions Judge, Pali and another, reported in RLW 1998(1) Raj.542. In the aforesaid case this Court while relying upon the judgment of Hon'ble Supreme Court in the case of State of Kerala and another v. N.M.Thomas & Ors. (AIR 1976 SC 490), held that a claim for promotion cannot be denied merely on basis of adverse remark for a year in Annual Performance Appraisal Report while considering the candidature for promotion under the criteria of seniority-cum-merit.

Reliance is also placed on a judgment of Hon'ble Supreme Court in the case of Shiv Kumar Sharma v. Haryana State Electricity Board Chandigarh and others, reported in 1988(3) SLR 524. In the aforesaid case Hon'ble Supreme Court held that imposition of a minor punishment has nothing to do with the question of determination of seniority.

I have considered the contention so raised. In my considered opinion the judgments on which

counsel for the petitioner has placed reliance are having no application in present controversy.

In the case of Shiv Kumar Sharma (supra) Hon'ble Supreme Court was dealing with the question with regard to effect on a seniority of a person on imposition of a minor punishment. Hon'ble Supreme Court held that the seniority of a person is nothing to do with imposition of a penalty.

Present one is not a case with regard to determination of seniority. In present case the question required to be determined is as to whether a minor punishment imposed upon an employee is having any effect while considering his candidature for promotion? This question was not at all considered by Hon'ble Supreme Court in the case of Shiv Kumar Sharma (supra).

Similarly in the case of Bal Kishan (supra) this Court held that wherever the criteria for promotion is seniority-cum-merit claim for promotion cannot be rejected only on the ground that Annual Performance Appraisal Report of Government Servant in respect of one year was not satisfactory.

The instant petition does not pertain to rejection of the petitioner's candidature for promotion due to adverse Annual Performance Appraisal

Report. The petitioner was considered for promotion and was not found fit due to imposition of a minor penalty. In view of it the law laid down by this Court in the case of Bal Kishan (supra) is also having no application in present controversy. The petitioner claimed for promotion to the post of Marketing Officer which under the Rules of 1986 is required to be filled in from amongst the Junior Marketing Officers by way of promotion under the criteria of merit and seniority-cum-merit with the ratio of 1:1. While considering for promotion imposition of punishment under applicable disciplinary rules is an important aspect which is required to be taken into consideration. The imposition of penalty reflects working efficiency of an employee, therefore, the same cannot be ignored while considering candidature of the person concerned while making the promotion. In view of it I am of the considered opinion that the respondents have not committed any error while not considering the petitioner fit to be promoted as Marketing Officer.

It is also contended by counsel for the petitioner that while making promotions against the vacancies for the year 1996-97 it was not open for the respondents to take into consideration a punishment which was imposed in the year 1989 and, therefore, the respondents by taking into consideration the punishment which was imposed in the year 1989 wrongly

denied promotion to the petitioner. This question cannot be examined in present writ petition as the subject mater of present petition is the promotions made to the post of Marketing Officer against the vacancies year of 1995-96. Sufficient foundation is not made by the petitioner in present writ petition to deal with the contention above. It is open for the petitioner to raise this grievance of him before competent authorities by way of submitting a representation.

In view of discussions made above the writ petition is devoid of merit and, therefore, the same is dismissed with no order as to costs.

(GOVIND MATHUR),J.

kkm/ps.